

CHAPTER 97

[Engrossed House Bill No. 1328]

ABUSE OF ELDERLY OR DEPENDENT PERSONS—REPORTING—
INVESTIGATIONS

AN ACT Relating to the abuse of elderly or dependent persons; amending section 1, chapter 13, Laws of 1965 as last amended by section 24, chapter 80, Laws of 1977 ex. sess. and RCW 26.44.010; amending section 2, chapter 13, Laws of 1965 as last amended by section 6, chapter 129, Laws of 1982 and RCW 26.44.020; amending section 3, chapter 13, Laws of 1965 as last amended by section 7, chapter 129, Laws of 1982 and RCW 26.44.030; amending section 4, chapter 13, Laws of 1965 as last amended by section 27, chapter 80, Laws of 1977 ex. sess. and RCW 26.44.040; amending section 5, chapter 13, Laws of 1965 as last amended by section 3, chapter 164, Laws of 1981 and RCW 26.44.050; amending section 6, chapter 35, Laws of 1969 ex. sess. as last amended by section 4, chapter 164, Laws of 1981 and RCW 26.44.070; adding a new chapter to Title 74 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 13, Laws of 1965 as last amended by section 24, chapter 80, Laws of 1977 ex. sess. and RCW 26.44.010 are each amended to read as follows:

The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children: PROVIDED, That such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious or erroneous information or actions: PROVIDED FURTHER, That this chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare and safety.

Adult (~~(developmentally disabled)~~) dependent persons not able to provide for their own protection through the criminal justice system shall also be afforded the protection offered children through the reporting and investigation requirements mandated in this chapter.

Sec. 2. Section 2, chapter 13, Laws of 1965 as last amended by section 6, chapter 129, Laws of 1982 and RCW 26.44.020 are each amended to read as follows:

For the purpose of and as used in this chapter:

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatry, optometry, chiropractic, nursing, dentistry, osteopathy and surgery, or medicine and surgery. The term "practitioner" shall include a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

(5) "Department" means the state department of social and health services.

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" shall include, but not be limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social worker" shall mean anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" shall mean any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" shall mean any registered pharmacist under the provisions of chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" shall mean any regularly licensed or ordained minister, priest or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Child abuse or neglect" shall mean the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child by any

person under circumstances which indicate that the child's health, welfare, and safety is harmed thereby. An abused child is a child who has been subjected to child abuse or neglect as defined herein: PROVIDED, That this subsection shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare, and safety.

(13) "Child protective services section" shall mean the child protective services section of the department.

(14) "Adult (~~((developmentally disabled))~~) dependent persons not able to provide for their own protection through the criminal justice system" shall be defined as those persons over the age of eighteen years (~~((with developmental disabilities))~~) who have been found legally incompetent pursuant to chapter 11.88 RCW or found disabled to such a degree pursuant to said chapter, that such protection is indicated: PROVIDED, That no persons reporting injury, abuse, or neglect to an adult (~~((developmentally disabled))~~) dependent person as defined herein shall suffer negative consequences if such a judicial determination of incompetency or disability has not taken place and the person reporting believes in good faith that the adult (~~((developmentally disabled))~~) dependent person (~~((needs the protection offered by this chapter))~~) has been found legally incompetent pursuant to chapter 11.88 RCW.

(15) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child for commercial purposes as those acts are defined by state law by any person.

(16) "Negligent treatment or maltreatment" means an act or omission which evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, and safety.

Sec. 3. Section 3, chapter 13, Laws of 1965 as last amended by section 7, chapter 129, Laws of 1982 and RCW 26.44.030 are each amended to read as follows:

(1) When any practitioner, professional school personnel, registered or licensed nurse, social worker, psychologist, pharmacist, or employee of the department has reasonable cause to believe that a child or adult (~~((developmentally disabled))~~) dependent person has suffered abuse or neglect, he shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040. The report shall be made at the first opportunity, but in no case longer than seven days after there is reasonable cause to believe that the child or adult has suffered abuse or neglect.

(2) Any other person who has reasonable cause to believe that a child or adult (~~((developmentally disabled))~~) dependent person has suffered abuse

or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040 as now or hereafter amended.

(3) The department upon receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult (~~((developmentally disabled))~~) dependent person who has died or has had physical injury or injuries inflicted upon him other than by accidental means or who has been subjected to sexual abuse shall report such incident to the proper law enforcement agency.

(4) Any law enforcement agency receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult (~~((developmentally disabled))~~) dependent person who has died or has had physical injury or injuries inflicted upon him other than by accidental means, or who has been subjected to sexual abuse, shall report such incident to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime has been committed.

Sec. 4. Section 4, chapter 13, Laws of 1965 as last amended by section 27, chapter 80, Laws of 1977 ex. sess. and RCW 26.44.040 are each amended to read as follows:

An immediate oral report shall be made by telephone or otherwise to the proper law enforcement agency or the department of social and health services and, upon request, shall be followed by a report in writing. Such reports shall contain the following information, if known:

(1) The name, address, and age of the child or adult (~~((developmentally disabled))~~) dependent person;

(2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child or the residence of the adult (~~((developmentally disabled))~~) dependent person;

(3) The nature and extent of the injury or injuries;

(4) The nature and extent of the neglect;

(5) The nature and extent of the sexual abuse;

(6) Any evidence of previous injuries, including their nature and extent; and

(7) Any other information which may be helpful in establishing the cause of the child's or adult (~~((developmentally disabled))~~) dependent person's death, injury, or injuries and the identity of the perpetrator or perpetrators.

Sec. 5. Section 5, chapter 13, Laws of 1965 as last amended by section 3, chapter 164, Laws of 1981 and RCW 26.44.050 are each amended to read as follows:

Upon the receipt of a report concerning the possible occurrence of abuse or neglect, it shall be the duty of the law enforcement agency or the

department of social and health services to investigate and provide the protective services section with a report in accordance with the provision of chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. Notwithstanding the provisions of RCW 13.04-.130 as now or hereafter amended, the law enforcement agency or the department of social and health services investigating such a report is hereby authorized to photograph such a child or adult (~~((developmentally disabled))~~) dependent person for the purpose of providing documentary evidence of the physical condition of the child or disabled person.

Sec. 6. Section 6, chapter 35, Laws of 1969 ex. sess. as last amended by section 4, chapter 164, Laws of 1981 and RCW 26.44.070 are each amended to read as follows:

The department shall maintain a central registry of reported cases of child abuse or abuse of an adult (~~((developmentally disabled))~~) dependent person and shall adopt such rules and regulations as necessary in carrying out the provisions of this section. Records in the central registry shall be considered confidential and privileged and will not be available except upon court order to any person or agency except (1) law enforcement agencies as defined in this chapter in the course of an investigation of alleged abuse or neglect; (2) protective services workers or juvenile court personnel who are investigating reported incidents of abuse or neglect; (3) department of social and health services personnel who are investigating the character and/or suitability of an agency and other persons who are applicants for licensure, registration, or certification, or applicants for employment with such an agency or persons, or under contract to or employed by an agency or persons directly responsible for the care and treatment of children, expectant mothers, or adult (~~((developmentally disabled))~~) dependent persons pursuant to chapter 74.15 RCW; (4) department of social and health services personnel who are investigating the character or suitability of any persons with whom children may be placed under the interstate compact on the placement of children, chapter 26.34 RCW; (5) physicians who are treating the child or adult (~~((developmentally disabled))~~) dependent person or family; (6) any child or adult (~~((developmentally disabled))~~) dependent person named in the registry who is alleged to be abused or neglected, or his or her guardian ad litem and/or attorney; (7) a parent, guardian, or other person legally responsible for the welfare and safety of the child or adult (~~((developmentally disabled))~~) dependent person named in the registry; (8) any person engaged in a bona fide research purpose, as determined by the department, according to rules and regulations, provided that information identifying the persons of the registry shall remain privileged; and (9) any individual whose

name appears on the registry shall have access to his own records. Those persons or agencies exempted by this section from the confidentiality of the records of the registry shall not further disseminate or release such information so provided to them and shall respect the confidentiality of such information, and any violation of this section shall constitute a misdemeanor.

NEW SECTION. Sec. 7. The legislature finds that there are a number of adults sixty years of age or older who lack the ability to perform or obtain those services necessary to maintain or establish their well-being. It is the intent of the legislature to prevent or remedy the abuse, neglect, exploitation, or abandonment of persons sixty years of age or older who have a functional, mental, or physical inability to care for or protect themselves by providing these persons with the least-restrictive services such as home care and preventing or reducing inappropriate institutional care. The legislature finds that it is in the interests of the public health, safety, and welfare of the people of the state to provide a procedure for identifying these persons and providing the services necessary for their well-being.

NEW SECTION. Sec. 8. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Abandonment" means leaving a vulnerable adult without the means or ability to obtain food, clothing, shelter, or health care.

(2) "Abuse" means an act of physical or mental mistreatment or injury which harms or threatens a person through action or inaction by another individual.

(3) "Consent" means express written consent granted after the person has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(4) "Department" means the department of social and health services.

(5) "Exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(6) "Neglect" means a pattern of conduct resulting in deprivation of care necessary to maintain minimum physical and mental health.

(7) "Secretary" means the secretary of social and health services.

(8) "Vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself.

NEW SECTION. Sec. 9. When a social worker, employee of the department, or health care practitioner licensed under Title 18 RCW, including but not limited to doctors, nurses, psychologists, and pharmacists, has reasonable cause to believe that a vulnerable adult has suffered abuse, exploitation, neglect, or abandonment, the person shall report the incident, or cause a report to be made, to the department.

NEW SECTION. Sec. 10. A person making a report under section 9 of this act shall make an immediate oral report to the department and shall

also make a written report as soon as practicable. Unless there is a judicial proceeding or the person consents, the identity of the person making the report is confidential. The reports shall contain the following information if known:

- (1) Identification of the vulnerable adult;
- (2) The nature and extent of the suspected abuse, neglect, exploitation, or abandonment;
- (3) Evidence of previous abuse, neglect, exploitation, or abandonment;
- (4) The name and address of the person making the report; and
- (5) Any other helpful information.

NEW SECTION. Sec. 11. A person participating in good faith in making a report under this chapter or testifying about the abuse, neglect, abandonment, or exploitation of a vulnerable adult in a judicial proceeding under this chapter is immune from liability resulting from the report or testimony.

NEW SECTION. Sec. 12. The department shall insure that all reports made under this chapter are responded to. If the department finds that an incident of abuse, neglect, exploitation, or abandonment has occurred, the department shall insure that appropriate protective services are provided to the vulnerable adult with the consent of the vulnerable adult. The services shall not be provided if the vulnerable adult withdraws or refuses consent. If the department determines that the vulnerable adult lacks the ability or capacity to consent, the department may bring an action under chapter 11.88 RCW as an interested person.

NEW SECTION. Sec. 13. In responding to reports of abuse, exploitation, neglect, or abandonment under this chapter, the department shall provide information to the elderly person on protective services available to the person and inform the person of the right to refuse such services. The department shall develop cooperative agreements with community-based agencies servicing the abused elderly. The agreements shall cover such subjects as the appropriate roles and responsibilities of the department and community-based agencies in identifying and responding to reports of elderly abuse, the provision of case-management services, standardized data collection procedures, and related coordination activities.

NEW SECTION. Sec. 14. If access is denied to an employee of the department seeking to investigate an allegation of abuse, neglect, exploitation, or abandonment of a vulnerable adult by an individual, the department may seek an injunction to prevent interference with the investigation. The court shall issue the injunction if the department shows that:

- (1) There is reasonable cause to believe that the person is a vulnerable adult and is or has been abused, neglected, exploited, or abandoned; and
- (2) The employee of the department seeking to investigate the report has been denied access.

NEW SECTION. Sec. 15. The department shall maintain a system for statistical data collection, accessible for bona fide research only as the department by rule prescribes. The identity of any person is strictly confidential.

NEW SECTION. Sec. 16. Section 9 of this act shall take effect on July 1, 1985.

NEW SECTION. Sec. 17. Sections 7 through 15 of this act shall constitute a new chapter in Title 74 RCW.

NEW SECTION. Sec. 18. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House January 31, 1984.

Passed the Senate February 24, 1984.

Approved by the Governor March 2, 1984.

Filed in Office of Secretary of State March 2, 1984.

CHAPTER 98

[Substitute House Bill No. 1400]

ASSOCIATED STUDENT BODIES—DISTRICTS WITH GRADES SIX AND UNDER MAY DELEGATE ASB AUTHORITY TO AN EMPLOYEE

AN ACT Relating to associated student bodies; amending section 1, chapter 52, Laws of 1973 as amended by section 3, chapter 284, Laws of 1975 1st ex. sess. and RCW 28A.58.115; and amending section 2, chapter 284, Laws of 1975 1st ex. sess. as last amended by section 1, chapter 231, Laws of 1982 and RCW 28A.58.120.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 52, Laws of 1973 as amended by section 3, chapter 284, Laws of 1975 1st ex. sess. and RCW 28A.58.115 are each amended to read as follows:

As used in this section, an "associated student body" means the formal organization of the students of a school formed with the approval of and regulation by the board of directors of the school district in conformity to the rules and regulations promulgated by the superintendent of public instruction; PROVIDED, That the board of directors of a school district may act or delegate the authority to an employee of the district to act as the associated student body for any school plant facility within the district containing no grade higher than the sixth grade.

The superintendent of public instruction, after consultation with appropriate school organizations and students, shall promulgate rules and regulations to designate the powers and responsibilities of the boards of directors of the school districts of the state of Washington in developing efficient administration, management, and control of moneys, records, and